

2019 WL 657073 (N.Y.Sup.) (Trial Pleading)  
Supreme Court of New York.  
Kings County

Davi WATTERS and Angelika Benton, Plaintiffs,

v.

THE CITY OF NEW YORK, NYPD Captain Roberto Melendez, Commanding Officer of  
84th PCT, NYPD Police Officer Matthew Demaio, Shield 23579, NYPD Police Officer  
Alexis Yanez, Shield 23098, NYPD Sergeant Robert Martinez, Shield 1369, NYPD Sergeant  
**David Grieco**, Shield 3830, NYPD Police Officer Jarrod Hebert, Tax 938601, NYPD Police  
Officer Clarence Batie, Tax 897006, and Nypd Police Officer John Does (1-10), Defendants.

No. 502965-2019.  
February 11, 2019.

Jury Trial Demanded

**Verified Complaint**

[Moses Ahn](#), Esq., Law Offices of Michael S. Lamonsoff, PLLC, 32 Old Slip, 8th Floor, New York, New York 10005,  
(212) 962-1020, for DAVI Watters and Angelika Benton.

**SUMMONS**

Plaintiffs designate Kings

County as the place of trial.

The basis of venue is the place of occurrence, 369 Euclid Avenue, County of Brooklyn.

To the above-named Defendants:

You are hereby summoned to answer the Complaint in this action and to serve a copy of their answer on plaintiffs' attorneys within 20 days after the service of this Summons, exclusive of the day of service (or within 30 days after the service is complete if this Summons is served by delivery to an official of the State of New York authorized to receive service on defendants' behalf); and in case of defendants' failure to appear or answer, judgment will be taken against defendants.

Dated: New York, New York

February 11, 2019

Yours, etc.

<<signature>>

MOSES AHN, ESQ.

LAW OFFICES OF MICHAEL S. LAMONSOFF, PLLC

Attorneys for DAVI WATTERS AND ANGELIKA BENTON

32 Old Slip, 8<sup>th</sup> Floor

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(212) 962-1020

Our File No. 28331

TO: THE CITY OF NEW YORK

c/o ZACHARY W. CARTER

CORPORATION COUNSEL, CITY OF NEW YORK

100 Church Street

New York, New York 10007

NYPD CAPTAIN ROBERTO MELENDEZ, COMMANDING OFFICER OF 84<sup>TH</sup> PCT,

c/o New York City Police Department

84<sup>th</sup> Precinct

301 Gold Street

Brooklyn, New York 11201

NYPD POLICE OFFICER MATTHEW DEMAIO, SHIELD 23579

c/o New York City Police Department

Strategic Response Group

1278 Sedgwick Avenue

Bronx, New York 10452

NYPD POLICE OFFICER ALEXIS YANEZ, SHIELD 23098,

c/o New York City Police Department

Detective Bureau Personnel

1 Police Plaza, Room 1200

New York, New York 10038

NYPD SERGEANT ROBERT MARTINEZ, SHIELD 1369,

c/o New York City Police Department

75<sup>th</sup> Precinct

1000 Sutter Avenue

Brooklyn, New York 11208

NYPD SERGEANT **DAVID GRIECO**, SHIELD 3830,

c/o New York City Police Department

Housing PSA2

560 Sutter Avenue

Brooklyn, New York 11207

NYPD POLICE OFFICER JARROD HEBERT, TAX 938601,

c/o New York City Police Department

Evidence Collection Team

653 Grand Avenue

Brooklyn, New York 11238

NYPD POLICE OFFICER CLARENCE BATIE, TAX 897006

c/o New York City Police Department

Evidence Collection Team

653 Grand Avenue

Brooklyn, New York 11238

Plaintiffs, DAVI WATTERS and ANGELIKA BENTON, by and through their attorneys, THE LAW OFFICES OF MICHAEL S. LAMONSOFF, PLLC, as and for their Verified Complaint, respectfully alleges, upon information and belief:

***PRELIMINARY STATEMENT***

1. Plaintiffs DAVI WATTERS and ANGELIKA BENTON bring this action for compensatory damages, punitive damages and attorney's fees pursuant to [42 U.S.C. § 1983](#) and [42 U.S.C. § 1988](#) for violations of his civil rights, as said rights are secured by said statutes and the Constitution of the United States of America.

***JURISDICTION***

2. This action is brought pursuant to [42 U.S.C. § 1983](#) and [42 U.S.C. § 1988](#), and the Fourth and Fourteenth Amendments to the United States Constitution.

3. This court has jurisdiction over each federal claim pursuant to concurrent jurisdiction.

***VENUE***

4. Venue is properly laid in the Supreme Court of the State of New York, in that the events giving rise to this claim occurred in Kings County in the State of New York.

***JURY DEMAND***

5. Plaintiffs DAVI WATTERS and ANGELIKA BENTON respectfully demand a trial by jury of all issues in this matter.

***PARTIES***

6. Plaintiff, DAVI WATTERS, is, and has been, at all relevant times, a resident of the County of Kings, City and State of New York.

7. Plaintiff, ANGELIKA BENTON, is, and has been, at all relevant times, a resident of the County of Lehigh, in the State of Pennsylvania.

8. Defendant, THE CITY OF NEW YORK, was and is a municipal corporation duly organized and existing under and by virtue of the laws of the State of New York.

9. Defendant, THE CITY OF NEW YORK, maintains the New York City Police Department, a duly authorized public authority and/or police department, authorized to perform all functions of a police department as per the applicable sections of the New York State Criminal Procedure Law, acting under the direction and supervision of the aforementioned municipal corporation, THE CITY OF NEW YORK.

10. At all times hereinafter mentioned, the individually named Defendants, NYPD CAPTAIN ROBERTO MELENDEZ, COMMANDING OFFICER OF 84<sup>TH</sup> PCT, NYPD POLICE OFFICER MATTHEW DEMAIO, SHIELD 23579, NYPD POLICE OFFICER ALEXIS YANEZ, SHIELD 23098, NYPD SERGEANT ROBERT MARTINEZ, SHIELD 1369, NYPD SERGEANT **DAVID GRIECO**, SHIELD 3830, NYPD POLICE OFFICER JARROD HEBERT, TAX 938601, NYPD POLICE OFFICER CLARENCE BATIE, TAX 897006, AND NYPD POLICE OFFICER JOHN DOES (1-10), were duly sworn members of said department and were acting under the supervision of said department and according to their official duties. Each Defendant is sued herein in their official and individual capacities.

11. At all times hereinafter mentioned the Defendants, either personally or through their employees, were acting under color of state law and/or in compliance with the official rules, regulations, laws, statutes, customs, usages and/or practices of the State or CITY OF NEW YORK.

12. Each and all of the acts of the Defendants alleged herein were done by said defendants while acting within the scope of their employment by defendant, THE CITY OF NEW YORK.

13. Each and all of the acts of the defendants alleged herein were done by said defendants while acting in furtherance of their employment by defendant, THE CITY OF NEW YORK.

### ***FACTS***

14. On February 19, 2016, at approximately 4:00 a.m., Plaintiffs, DAVI WATTERS and ANGELIKA BENTON, were lawfully inside of an apartment building, located at 369 Euclid Avenue, County of Brooklyn, City and State of New York.

15. At this time, Defendants NYPD CAPTAIN ROBERTO MELENDEZ, COMMANDING OFFICER OF 84<sup>TH</sup> PCT, NYPD POLICE OFFICER MATTHEW DEMAIO, SHIELD 23579, NYPD POLICE OFFICER ALEXIS YANEZ, SHIELD 23098, NYPD SERGEANT ROBERT MARTINEZ, SHIELD 1369, and NYPD SERGEANT **DAVID GRIECO**, SHIELD 3830, arrived at the location on duty and in uniform and plain-clothes.

16. Without any legal justification or excuse, the Defendants NYPD CAPTAIN ROBERTO MELENDEZ, COMMANDING OFFICER OF 84<sup>TH</sup> PCT, NYPD POLICE OFFICER MATTHEW DEMAIO, SHIELD 23579, NYPD POLICE OFFICER ALEXIS YANEZ, SHIELD 23098, NYPD SERGEANT ROBERT MARTINEZ, SHIELD 1369, NYPD SERGEANT **DAVID GRIECO**, SHIELD 3830 and other members of the New York City Police Department entered the apartment.

17. Defendants NYPD CAPTAIN ROBERTO MELENDEZ, COMMANDING OFFICER OF 84<sup>TH</sup> PCT, NYPD POLICE OFFICER MATTHEW DEMAIO, SHIELD 23579, NYPD POLICE OFFICER ALEXIS YANEZ, SHIELD 23098, NYPD SERGEANT ROBERT MARTINEZ, SHIELD 1369, NYPD SERGEANT **DAVID GRIECO**, SHIELD 3830, NYPD POLICE OFFICER JARROD HEBERT, TAX 938601, NYPD POLICE OFFICER CLARENCE BATIE, TAX 897006, AND NYPD POLICE OFFICER JOHN DOES (1-1 0) proceeded to search the premises.

18. The search yielded no evidence of any guns, drugs, or contraband, much less anything illegal in the possession - actual or constructive - of Plaintiffs DAVI WATTERS and ANGELIKA BENTON.

19. Plaintiffs were not engaged in any unlawful or suspicious activity.

20. Nonetheless, Plaintiffs were formally arrested, were placed in handcuffs, and were transported to the stationhouse of a local area precinct believed to be the 75<sup>th</sup> Precinct where they were searched and detained for several hours.

21. The search at the stationhouse yielded no evidence of any guns, drugs, or contraband.

22. At no time on February 19, 2016, did Plaintiffs commit any crime or violation of law.

23. At no time on February 19, 2016, did Defendants NYPD CAPTAIN ROBERTO MELENDEZ, COMMANDING OFFICER OF 84<sup>TH</sup> PCT, NYPD POLICE OFFICER MATTHEW DEMAIO, SHIELD 23579, NYPD POLICE OFFICER ALEXIS YANEZ, SHIELD 23098, NYPD SERGEANT ROBERT MARTINEZ, SHIELD 1369, NYPD

SERGEANT **DAVID GRIECO**, SHIELD 3830, NYPD POLICE OFFICER JARROD HEBERT, TAX 938601, NYPD POLICE OFFICER CLARENCE BATIE, TAX 897006, AND NYPD POLICE OFFICER JOHN DOES (1-10), or any other member of the NYPD possess probable cause to arrest Plaintiffs or to order Plaintiffs' arrests.

24. At no time on February 19, 2016 did Defendants NYPD CAPTAIN ROBERTO MELENDEZ, COMMANDING OFFICER OF 84<sup>TH</sup> PCT, NYPD POLICE OFFICER MATTHEW DEMAIO, SHIELD 23579, NYPD POLICE OFFICER ALEXIS YANEZ, SHIELD 23098, NYPD SERGEANT ROBERT MARTINEZ, SHIELD 1369, NYPD SERGEANT **DAVID GRIECO**, SHIELD 3830, NYPD POLICE OFFICER JARROD HEBERT, TAX 938601, NYPD POLICE OFFICER CLARENCE BATIE, TAX 897006, AND NYPD POLICE OFFICER JOHN DOES (1-10), or any other member of the NYPD possess information that would lead a reasonable officer to believe probable cause existed to arrest the Plaintiffs.

25. Plaintiffs were detained for several hours at the stationhouse of a local area precinct before they were transported to Kings County Central Booking where they were held for several additional hours.

26. Plaintiffs were eventually arraigned on criminal complaint containing false allegations sworn to by Defendant DEMAIO, and falsely informed by Defendants NYPD CAPTAIN ROBERTO MELENDEZ, COMMANDING OFFICER OF 84<sup>TH</sup> PCT, NYPD POLICE OFFICER ALEXIS YANEZ, SHIELD 23098, NYPD SERGEANT ROBERT MARTINEZ, SHIELD 1369, NYPD SERGEANT **DAVID GRIECO**, SHIELD 3830, NYPD POLICE OFFICER JARROD HEBERT, TAX 938601, NYPD POLICE OFFICER CLARENCE BATIE, TAX 897006, AND NYPD POLICE OFFICER JOHN DOES (1-10).

27. Specifically, Defendant DEMAIO - falsely informed by other Defendant officers - falsely swore out criminal complaint against Plaintiff WATTERS, stating that he was in possession of firearms and marijuana at 369 Euclid Avenue, despite knowing that the allegations were false when he made them.

28. Pursuant to these false allegations, Plaintiff WATTERS was charged with criminal possession of a weapon in the third degree, criminal possession of a firearm, criminal possession of a weapon in the fourth degree, unlicensed firearms, and unlawful possession of marijuana.

29. Despite Defendants' unconstitutional actions, all charges against Plaintiff WATTERS were dismissed in their entirety.

30. Defendant DEMAIO - again falsely informed by other Defendant officers - falsely swore out criminal complaints against Plaintiff BENTON, stating that she was in possession of pistol ammunition at 369 Euclid Avenue, despite knowing that those allegations were false when he made them.

31. Pursuant to these false allegations, the Plaintiff BENTON was charged with possession of pistol ammunition

32. Despite Defendants' unconstitutional actions, all charges against the Plaintiff WATTERS were dismissed in their entirety.

33. Plaintiff WATTERS' charges were dismissed on August 26, 2016, constituting a favorable termination.

34. Plaintiff BENTON accepted an Adjournment in Contemplation of Dismissal, whereupon the charge against her was dismissed on October 14, 2016.

35. Defendant DEMAIO and other Defendant officers provided knowingly false and misleading information to prosecutors at the Kings County District Attorney's Office.

36. Each of the allegations were false and the Defendant DEMAIO and other Defendant officers knew them to be false when they were made.

37. As a result of the foregoing, the Plaintiffs sustained, *inter alia*, deprivation of their constitutional rights.

38. All of the aforementioned acts of Defendants, their agents, servants and employees, were carried out under the color of state law.

39. All of the aforementioned acts deprived the Plaintiffs of their rights, privileges and immunities guaranteed to citizens of the United States by the Fourth and Fourteenth Amendments to the Constitution of the United States of America, and were therefore in violation of [42 U.S.C. Section 1983](#).

40. The acts complained of were carried out by the aforementioned individual Defendants in their capacities as police officers with all of the actual and/or apparent authority attendant thereto.

41. The acts complained of were carried out by the aforementioned individual Defendants in their capacities as police officers, pursuant to the customs, usages, practices, procedures, and rules of THE CITY OF NEW YORK and the New York City Police Department, all under the supervision of ranking officers of said department.

42. Defendants, collectively and individually, while acting under color of state law, engaged in conduct which constituted custom, usage, practice, procedure or rule of respective municipality/authority, which is forbidden by the Constitution of the United States.

43. Although each Defendant officer had ample opportunities to stop or prevent the unconstitutional actions of their fellow officers, they refused or failed to do so.

***FIRST CLAIM FOR RELIEF FOR FALSE ARREST***

***UNDER [42 U.S.C. § 1983](#) AS TO BOTH PLAINTIFFS***

44. Plaintiffs repeat, reiterate, and reallege each and every allegation set forth above with the same force and effect as if fully set forth herein and at length.

45. As a result of the Defendants' conduct, Plaintiffs were subject to illegal, improper and false arrest, taken into custody, and caused to be falsely imprisoned, detained, and confined without any probable cause, privilege, or consent.

46. As a result of the foregoing, Plaintiffs' liberty was restricted, they were put in fear for their safety, and they were falsely arrested without probable cause.

***SECOND CLAIM FOR RELIEF FOR***

***DENIAL OF RIGHT TO FAIR TRIAL UNDER [42 U.S.C. § 1983](#) AS TO BOTH PLAINTIFFS***

47. Plaintiffs repeat, reiterate, and reallege each and every allegation set forth above with the same force and effect as if fully set forth herein and at length.

48. At no time did Defendant DEMAIO or any other Defendant officer have any legal basis for commencing criminal process, nor was there any reasonable basis to believe said conduct set forth herein was lawful, reasonable, or otherwise appropriate.

49. Defendant DEMAIO and other Defendant officers misrepresented and falsified evidence to the Kings County District Attorney.

50. Defendant DEMAIO and other Defendant officers did not make a complete and full statement of facts to the District Attorney.

51. Defendant DEMAIO and other Defendant officers withheld exculpatory evidence from the District Attorney.

52. Defendant DEMAIO and other Defendant officers was directly and actively involved in the initiation of criminal proceedings against Plaintiffs.

53. Defendant DEMAIO and other Defendant officers lacked probable cause to initiate criminal proceedings against Plaintiffs.

54. Defendant DEMAIO and other Defendant officers acted with malice in initiating criminal proceedings against Plaintiffs.

55. Defendant DEMAIO and other Defendant officers directly and actively involved in the continuation of criminal proceedings against Plaintiffs.

56. Defendant DEMAIO and other Defendant officers lacked probable cause to continue criminal proceedings against Plaintiffs.

57. Defendant DEMAIO and other Defendant officers misrepresented and falsified evidence throughout all phases of the criminal proceedings against Plaintiffs.

58. Notwithstanding the perjurious and fraudulent conduct of Defendant DEMAIO and other Defendant officers the criminal proceedings were terminated in Plaintiffs' favor either by straight dismissal or dismissal after an adjournment..

59. By so doing, the individual Defendants, individually and collectively, subjected the Plaintiffs to fabrication of evidence, denial of fair trial, and denial of due process, and thereby violated, conspired to violate, and aided and abetted in the violation of Plaintiffs' rights under the Fourth and Fourteenth Amendments of the United States Constitution.

60. By reason thereof, the individual Defendant DEMAIO and other Defendant officers have violated [42 U.S.C. § 1983](#) and caused Plaintiffs to suffer emotional and physical injuries, mental anguish, incarceration and the deprivation of liberty, and the loss of their constitutional rights.

***THIRD CLAIM FOR RELIEF FORMALICIOUS PROSECUTION  
UNDER [42 U.S.C. § 1983](#) AS TO PLAINTIFF WATTERS***

61. Plaintiffs repeat, reiterate, and reallege each and every allegation set forth above with the same force and effect as if fully set forth herein and at length.

62. Defendants fabricated knowingly false material evidence and forwarded said evidence to prosecutors at the Kings County District Attorney's Office.

63. As a result, Plaintiff WATTERS suffered deprivation of their liberty, as he was required to make numerous court appearances to contest the false accusations against them.

64. As a result of the foregoing, Plaintiffs' liberty was restricted, they were put in fear for their safety, and they were detained and falsely arrested, and maliciously prosecuted without probable cause.

***FOURTH CLAIM FOR RELIEF AGAINST INDIVIDUALLY NAMED  
DEFENDANTS (42 U.S.C. § 1983: FAILURE TO INTERVENE)***

65. Plaintiffs repeat, reiterate, and reallege each and every allegation set forth above with the same force and effect as if fully set forth herein and at length.

66. Although each Defendant officer had ample opportunities to stop or prevent the unconstitutional actions of their fellow officers, they refused or failed to do so.

67. That defendants' failure to intervene to prevent and/or stop the improper and unconstitutional conduct of their fellow officers entitles plaintiff to recover monetary damages from these defendants under 42 U.S.C. § 1983.

***FIFTH CLAIM FOR RELIEF FOR MUNICIPAL LIABILITY  
UNDER 42 U.S.C. § 1983 AS TO BOTH PLAINTIFFS***

68. Plaintiffs repeat, reiterate, and reallege each and every allegation set forth above with the same force and effect as if fully set forth herein and at length.

69. Defendants arrested, searched, and incarcerated plaintiffs in the absence of any evidence of criminal wrongdoing, notwithstanding their knowledge that said search, arrest and incarceration would jeopardize Plaintiffs' liberty, well-being, safety, and violate their constitutional rights.

70. The acts complained of were carried out by the aforementioned individual Defendants in their capacities as police officers and officials, with all the actual and/or apparent authority attendant thereto.

71. The acts complained of were carried out by the aforementioned individual Defendants in their capacities as police officers and officials pursuant to the customs, policies, usages, practices, procedures, and rules of THE CITY OF NEW YORK and the New York City Police Department, all under the supervision of ranking officers of said department.

72. Those customs, policies, patterns, and practices include, but are not limited to:

- i. requiring officers to make a predetermined number of arrests and/or issue a predetermined number of summonses within a predetermined time frame;
- ii. requiring precincts to record a predetermined number of arrests and/or issue a predetermined number of summonses within a predetermined time frame;
- iii. failing to take any measures to correct unconstitutional behavior when brought to the attention of supervisors and/or policy makers;
- iv. failing to properly train police officers in the requirements of the United States Constitution.

73. The aforesaid customs, policies, usages, practices, procedures and rules of THE CITY OF NEW YORK and the New York City Police Department directly cause, *inter alia*, the following unconstitutional practices:

- i. arresting individuals regardless of probable cause in order to inflate the officer's arrest statistics;
- ii. arresting individuals regardless of probable cause in order to positively affect precinct-wide statistics;
- iii. falsifying evidence and testimony to support those arrests;
- iv. falsifying evidence and testimony to cover up police misconduct.

74. The foregoing customs, policies, usages, practices, procedures and rules of THE CITY OF NEW YORK and the New York City Police Department constitute a deliberate indifference to the safety, well-being and constitutional rights of Plaintiffs.

75. The foregoing customs, policies, usages, practices, procedures and rules of THE CITY OF NEW YORK and the New York City Police Department were the direct and proximate cause of the constitutional violations suffered by Plaintiffs as alleged herein.

76. The foregoing customs, policies, usages, practices, procedures and rules of THE CITY OF NEW YORK and the New York City Police Department were the moving force behind the constitutional violations suffered by Plaintiffs as alleged herein.

77. As a result of the foregoing customs, policies, usages, practices, procedures and rules of THE CITY OF NEW YORK and the New York City Police Department, Plaintiffs was placed under arrest unlawfully.

78. Defendants, collectively and individually, while acting under color of state law, were directly and actively involved in violating the constitutional rights of Plaintiffs.

79. Defendants, collectively and individually, while acting under color of state law, acquiesced in a pattern of unconstitutional conduct by subordinate police officers, and were directly responsible for the violation of Plaintiffs' constitutional rights.

80. All of the foregoing acts by defendants deprived Plaintiffs of federally protected constitutional rights, particularly their Fourth and Fourteenth Amendment rights to be free from unreasonable search and seizure.

WHEREFORE, the Plaintiffs respectfully requests judgment against Defendants on each of the foregoing causes of action as follows:

- i. an order awarding compensatory damages in an amount to be determined at trial;
- ii. an order awarding punitive damages in an amount to be determined at trial;
- iii. reasonable attorneys' fees and costs under [42 U.S.C. § 1988](#); and
- iv. directing such other and further relief as the Court may deem just and proper, together with attorneys' fees, interest, costs and disbursements of this action.

Dated: New York, New York

February 11, 2019

<<signature>>

MOSES AHN, ESQ.

LAW OFFICES OF MICHAEL S. LAMONSOFF, PLLC

Attorneys for Plaintiffs WATTERS and BENTON

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